

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into
Implementation of Assembly Bill 1149 Regarding
Underground Electric and Communication
Facilities.

Rulemaking 00-01-005

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING
PETITION FOR MODIFICATION OF DECISION 01-12-009
BY THE CITY OF OAKLAND**

Summary

This ruling denies the City of Oakland's (Oakland) Petition for Modification (Petition) of Decision (D.) 01-12-009. Oakland's Petition requests modification of Section VI.A.1, Findings of Fact 4, and Ordering Paragraph 2 to include areas of fire and earthquake risk in the Rule 20A definition of the Public Interest. The Petition is denied on the grounds that it does not meet the requirements of Rule 47, is premature, and the Commission is not persuaded to modify the decision. D.01-12-009, issued December 11, 2002, is only an Interim Opinion following Phase I of this proceeding. This proceeding is ongoing and the issues Oakland raises in its Petition may be addressed in Phase II.

Background

On January 6, 2000, the Commission issued an Order Instituting Rulemaking (OIR) 00-01-005, to Implement Assembly Bill (AB) 1149. AB 1149 requires the Commission to conduct a study into ways to amend, revise, and improve the rules for the conversion of existing overhead electric and

communications lines to underground service. Phase I of the proceeding included eight workshop sessions, eight Public Participation Hearings (PPH), data requests to the utilities, and multiple rounds of comments and reply comments, but no evidentiary hearings. The Interim Opinion issued on December 12, 2001, only addressed those topics that the Commission could resolve without evidentiary hearings. The decision also set forth some of the issues that the Commission wants to explore in Phase II, but does not foreclose any topic from inclusion in Phase II.

Oakland filed its Petition on January 10, 2002.¹ Specifically, Oakland asks the Commission to modify the interim opinion in Section VI.A.1, Finding of Fact 4, and Ordering Paragraph 2 to include areas of fire and earthquake risk in the Rule 20A definition of Public Interest. This is Oakland's entire request for modification.

On January 25, 2002, Southern California Edison Company (Edison) filed an opposition and on March 6, 2002, Pacific Gas & Electric Company (PG&E) filed a response. Both Edison and PG&E oppose Oakland's Petition because it fails to satisfy the conditions of Rule 47² and is meritless.

Rule 47

Rule 47 covers Petitions for Modification and states in pertinent part at 47(b):

¹ Concurrently with the Petition, Oakland filed an Application for Rehearing of the Interim Opinion. The Application for Rehearing was denied on March 6, 2002, D. 02-03-026.

² All references to rules, unless otherwise noted, are to the California Public Utilities Commission's Rules of Practice and Procedure.

A petition for modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

Discussion

Throughout Phase I of the proceeding, Oakland argued in support of including areas of fire and earthquake risk in an expanded definition of public interest so that such areas would qualify for Rule 20A funding. In fact, at a PPH held in Oakland, Gerald Simon, Chief of the Oakland Fire Service Agency, spoke to the perceived hazards of overhead lines if they were felled by fire, high winds, or rain. Chief Simon also submitted a letter dated October 13, 2000, that addressed the problems downed power lines presented, including interfering with the movement of emergency crews. At this same PPH other Oakland/Berkeley citizens shared anecdotes about downed power lines from their experiences from the Oakland fires of 1991.

There were no evidentiary hearings in Phase I of this proceeding. Although the transcripts from the PPHs are part of the record, as is Chief Simon's letter, there was no opportunity for cross-examination or further exploration as to the reliability, or general applicability, of Oakland's anecdotal observations concerning power lines and safety.

On April 24, 2001, Commissioner Duque, the assigned Commission, sent a letter to the Legislature informing lawmakers of the progress of the OIR, and its bifurcation into two Phases. The letter did foretell that an Interim Order was in process and that it would "expand Rule 20A criteria to add more areas within the

definition of public interest (i.e. arterial streets or major thoroughfares, and areas of fire hazard and earthquake risk); [.]”

On October 4, 2001, the Commission issued a Draft Decision (DD) on Phase I, that proposed adopting a limited expansion of Rule 20A to include arterial streets, major thoroughfares, and “areas of fire hazard and earthquake risk”. Comments to the DD were filed on November 2, 2001; reply comments on November 16, 2001. On December 12, 2001, the Commission issued the Interim Decision. The Interim Decision incorporated the comments and did not include “areas of fire hazard and earthquake risk.” With few exceptions, the comments and reply comments discussed the fact that there had not been any evidentiary hearings on the topics of fire and earthquake safety, and specifically whether underground wires performed better in wind, rain, fire, and earthquakes. The comments also discussed the fact that there were no objective criteria to guide local governments with the designation of fire and earthquake hazards or to ensure that the designations will be made fairly for all citizens.

Oakland’s Arguments in Support of the Petition to Modify

Oakland believes that substantial evidence was submitted in support of amending Rule 20A to include areas of fire and earthquake hazard, and that this evidence is sufficient to justify the inclusion of such language in the Interim Opinion. Oakland also argues that local governments can designate fire and earthquake hazard areas according to objective criteria and to apply the criteria fairly.

Edison and PG&E’s Arguments in Opposition

Succinctly put, Edison and PG&E submit that Oakland’s Petition offers nothing more than a re-argument of the same points Oakland already raised during the workshops, the PPHs, and numerous briefs—arguments the

Commission has rejected, and should reject again. Both utilities also contend that Oakland's Petition falls short of fulfilling the conditions of Rule 47 because it fails to state the justification for the requested modifications and fails to provide new evidence.

In addition, both Edison and PG&E allege that Oakland's claim that there is substantial evidence to support inclusion of fire and earthquake areas is unfounded. The record is virtually bereft of evidence to support the inclusion of earthquake hazard as an expanded area for Rule 20A. In fact, on the subject of earthquakes, PG&E submits that there was evidence that overhead wires constructed in compliance with General Order 95 performed well in recent earthquakes in Loma Prieta, Landers, and Northridge.

On the issue of including fire hazard, both utilities argue that the evidence does not support including it as an expanded area for Rule 20A. As PG&E alleges, the one letter from Chief Simon, submitted without any cross-examination or scrutiny, does not amount to substantial evidence and does not support a change to the public interest criteria of Rule 20A. PG&E supports the Interim Decision as written because expanding the criteria to include fire hazards creates problems because it: is impossible to define "fire hazard" with any precision, would invite abuse and controversy, and could eliminate the original public interest goal that Rule 20A projects be limited to areas that benefit all ratepayers.

Conclusion

The Commission is not persuaded that Oakland satisfied the conditions set forth in Rule 47, and denies the Petition on that ground. Oakland did not show that there was sufficient evidence in the record to modify the Interim Decision

and Oakland did not present any declarations or affidavits proposing new or changed facts. In addition, the Petition is premature because the topics of fire and earthquake hazard can be addressed in Phase II of this proceeding, where they can be subjected to cross-examination and scrutiny.

IT IS RULED that the Petition for Modification of Decision 01-12-009 by the City of Oakland is denied.

Dated April 11, 2002, at San Francisco, California.

/s/CAROL BROWN

Carol Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Petition for Modification of Decision 01-12-009 by the City of Oakland on all parties of record in this proceeding or their attorneys of record.

Dated April 11, 2002, at San Francisco, California.

/s/ JACQUELINE GORZUCH
Jacqueline Gorzoch

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.